

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

AFFIDAVIT OF MARK RASMUSSEN

1. My name is Mark Rasmussen. My business address is The Coalition for Buzzards Bay (“The Coalition”), 620 Belleville Avenue, New Bedford, MA 02745. I have been the Executive Director of The Coalition since 1998. I make this affidavit based upon personal knowledge in support of the Unopposed Motion of the Coalition for Buzzards Bay to Intervene.

2. The Coalition, which was founded in 1987, is a nonprofit membership organization dedicated to the restoration, protection, sustainable use and enjoyment of Buzzards Bay. The Coalition's work is focused in four main areas: water quality and natural resource monitoring, advocacy, land conservation and education.

3. Buzzards Bay was designated by the United States Congress in 1985 as an “Estuary of National Significance,” and was further designated by the United States Environmental Protection Agency as a “No Discharge Area” in 2000. The Bay is also a

state-designated Ocean Sanctuary, and is home to a variety of threatened and endangered species, including approximately half of the remaining global population of the endangered roseate tern. At 28 miles long, with an average width of only 8 miles and a mean depth of only 36 feet, Buzzards Bay poses many risks to navigation. Both ends of the Bay are marked with dangerous ledges, reefs and currents. Nonetheless, an estimated 2 billion gallons of oil is transported through Buzzards Bay each year. The Bay consequently has a long history of significant oil spills which have inflicted serious ecological damage on the Bay and its diverse natural resources.

4. Among The Coalition's more than 4,000 individual, family, business and organizational members and volunteers, the vast majority are active users of the Bay and its shoreline for a broad variety of recreational and commercial purposes – including swimming, sunbathing, bird-watching, boating, kayaking, windsurfing, fishing, shellfishing, aquaculture, tourism and education. The Coalition and its members have a significant interest in sustaining these uses and protecting the Bay's myriad natural resources.

5. When Bouchard Transportation Company's Barge-120 grounded in Buzzards Bay on April 27, 2003, The Coalition and its members suffered the acutely negative impact of the resulting oil spill. The Bouchard-120 released a reported 98,000 gallons of heavy fuel oil that contaminated some 93 miles of shoreline, closed thousands of acres of shellfish beds, killed hundreds of protected birds, and closed public and private beaches. The toxic effects of this single spill are expected to linger for decades.

6. Many of The Coalition's members own waterfront property that was contaminated by the Bouchard-120 oil spill. In the aftermath of the oil spill, their

beaches, seawalls, docks and jetties were covered to varying extents with the thick heavy No. 6 fuel oil, in many cases leaving these areas unusable for lengthy periods of time.

7. Additionally, a number of The Coalition's members derive at least part of their income from the Bay and its natural resources, including through harvesting the Bay's abundant shellfish and lobsters, tourism, various aspects of providing recreational boating services, etc. Thus, the Bouchard-120 oil spill – which forced the temporary closure of beaches, restricted fishing activities and left thousands of acres of shellfish beds closed for many months – had a significant impact on these members' abilities to derive their usual incomes from the Bay's resources.

8. In 2001, The Coalition was officially designated by the Commonwealth of Massachusetts as the Volunteer Coordinator in the event of any significant oil spill in Buzzards Bay. Therefore, in the wake of the Bouchard-120 Buzzards Bay oil spill that occurred on April 27, 2003, the Coalition coordinated the efforts of nearly 1,000 oil spill response volunteers and represented the municipalities adjacent to the Bay in advocating for cleanup of the oil. As the designated Volunteer Coordinator for the Bouchard-120 spill, The Coalition coordinated the efforts of hundreds of volunteers who became involved in wildlife rehabilitation and worked with countless others to educate the public about oil spill safety issues.

9. At the outset of the Bouchard-120 oil spill, The Coalition established a phone bank to receive calls from prospective volunteers and solicit information regarding these volunteers' particular skills. The Coalition also worked with various city, state and federal government officials as well as wildlife rehabilitation experts to set up a wildlife rehabilitation center at the New Bedford Wastewater Treatment Facility. Using the

information gleaned from the volunteer phone bank, we then coordinated the staffing of the wildlife rehabilitation center and ensured that sufficient volunteers were present to care for the contaminated and recovering wildlife, including approximately 177 birds that were brought to the facility for treatment. The wildlife rehabilitation volunteers were trained by experts and then worked often long hours to meticulously wash oil off contaminated birds, attended to the feeding and care of birds in recovery, and generally kept the temporary rehabilitation center operating.

10. The Coalition also coordinated the efforts of volunteers who assembled packets of oil spill-related information to educate residents of coastal Bay communities about how to avoid becoming contaminated with oil and how to remove oil from skin in the event that contamination occurred. The Coalition then coordinated the efforts of additional volunteers who distributed these information packets door-to-door.

11. In the aftermath of the Bouchard-120 spill, The Coalition also undertook to prevent future oil spills in Buzzards Bay and initially worked to expand its base of knowledge with respect to all aspects of oil transport through the Bay. This endeavor entailed a review of the history of spills in the Bay, substantial research regarding oil tug/barge safety measures that have proven successful elsewhere, and active communication with individuals and companies who are involved in, or affected by, the transport of oil through Buzzards Bay. Among other things, our staff interviewed Vessel Traffic Service Systems (VTS) operators at various locations throughout the United States, conferred with government officials, marine safety and environmental groups in other states to better understand state-level vessel safety requirements (including escort tug requirements for certain waterways), and met with local marine pilots, tug operators,

local first-responders, government officials, shellfishermen, maritime law specialists, scientists and even maritime industry insurers. We also expanded our existing knowledge regarding the persistence of toxic oil compounds in the environment, federal and state laws and regulations pertaining to vessel safety, and vessel safety statistics and regulation.

12. In the Fall of 2003, The Coalition set about researching and drafting oil spill prevention laws for the Commonwealth of Massachusetts; these draft laws became the framework and body of the comprehensive oil spill prevention act that was introduced on the one-year anniversary of the Bouchard-120 spill and was signed into law in August 2004. *An Act Relative to Oil Spill Prevention and Response in Buzzards Bay and Other Harbors and Bays of the Commonwealth*, 2004 Mass. Acts ch. 251, as amended by 2004 Mass. Acts ch. 457 (the “Oil Spill Prevention Act”).

13. The Coalition not only worked with the Commonwealth of Massachusetts’ Buzzards Bay Oil Spill Commission in crafting the Oil Spill Prevention Act, but also testified in support of this legislation before the Massachusetts Legislature’s Joint Committee on Natural Resources and Agriculture. In these endeavors, The Coalition was able to share its unique knowledge and expertise with respect to the geographic, navigational, natural resource, economic and other characteristics of Buzzards Bay, including oil spill response planning and training.

14. Since the enactment of the MA Oil Spill Prevention Act, The Coalition has continued to be involved with oil spill prevention efforts pertaining to Buzzards Bay. Among other things, in November and December 2004, The Coalition provided extensive written and oral testimony to the United States Coast Guard in connection with the Coast

Guard's Advanced Notice of Proposed Rulemaking (ANPRM) for Navigation and Waterways Management Improvements for Buzzards Bay. The Coalition has also been monitoring on-the-water compliance with the MA Oil Spill Prevention Act in Buzzards Bay, and will continue to conduct such monitoring on a regular basis with the benefit of its vessel, the *R/V Buzzards Baykeeper*.

15. In view of the substantial protections that the MA Oil Spill Prevention Act provides to The Coalition and its members, The Coalition's governing board has authorized counsel to intervene in the present action in order to defend the provisions of the MA Oil Spill Prevention Act that protect Buzzards Bay.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ Mark Rasmussen
Mark Rasmussen

Date: March 31, 2005